

EXHIBIT 4

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

AIDA ELZAGALLY, et al., . Civil Action No. 1:19cv853
Plaintiffs, . Alexandria, Virginia
vs. . September 13, 2021
11:05 a.m.
KHALIFA HAFTAR, .
Defendant. .
. X

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE MICHAEL S. NACHMANOFF
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

FOR THE PLAINTIFFS: FAISAL M. GILL, ESQ.
Gill Law Firm
1717 Pennsylvania Avenue, N.W.
Suite 1025
Washington, D.C. 20005

FOR THE DEFENDANT: LINDSAY R. MCKASSON, ESQ.
Binnall Law Group, PLLC
717 King Street, Suite 200
Alexandria, VA 22314

TRANSCRIBER: ANNELIESE J. THOMSON, RDR, CRR
U.S. District Court, Third Floor
401 Courthouse Square
Alexandria, VA 22314
(703)299-8595

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(Proceedings recorded by electronic sound recording, transcript
produced by computerized transcription.)

1 P R O C E E D I N G S

2 THE CLERK: Elzagally, et al., versus Haftar, Case
3 No. 19cv853. Will the parties please note their appearances
4 for the record.

5 MR. GILL: Good morning, Your Honor. Faisal Gill for
6 the plaintiffs.

7 THE COURT: Good morning, Mr. Gill.

8 MS. McKASSON: Good morning, Your Honor. Lindsay
9 McKasson for defendant, Mr. Hifter.

10 THE COURT: All right, good morning.

11 This matter comes before the Court on plaintiffs'
12 motion to compel. I've received the motion, the opposition,
13 and the reply brief. I've had a chance to review all of them,
14 so I'll hear argument briefly, but you don't need to repeat
15 what is already in the papers.

16 If you are fully vaccinated and you feel comfortable,
17 you can take off your mask when you are at the podium to
18 address me. I would ask, of course, that everyone keep their
19 masks on when they are not speaking. I am fully vaccinated,
20 but I find it's difficult for me to communicate well if I keep
21 my mask on, but nobody is obliged to take their mask off.

22 Okay. I'll hear from you first, Mr. Gill.

23 MR. GILL: Thank you, Your Honor. I'm also fully
24 vaccinated.

25 Your Honor, there is no dispute, as you've seen from

1 the papers, there is no dispute as to the law here. The law is
2 very clear. Our own circuit, the Fourth Circuit, has ruled in
3 this case and not too long ago in *El-Masri*, where it states the
4 state secrets privilege is only available for the United States
5 government.

6 This is not the United States government. There is
7 no precedent anywhere that allows the state secrets privilege
8 to be asserted by anybody other than the United States.
9 Defense counsel in their brief admit that.

10 The issue here is not what the law is but what the
11 law should be, and I don't think we should be here to discuss
12 that issue. It is -- the law is extremely clear. The state
13 secrets privilege does not apply to Mr. Hifter, and he cannot
14 assert it.

15 On -- leaving that aside, leaving the state secrets
16 privilege aside, the rest of the objections that counsel have
17 made, relevance objections, also, you know, also fall -- should
18 fall on deaf ears because the documents that we're asking for
19 are extremely relevant. They go to the heart of the case.

20 The -- our complaint is that General Hifter was
21 basically indiscriminately bombing the areas where our
22 plaintiffs were, were killed. The only way we can prove that
23 in court is to get the documents that we're asking for.

24 We specifically tailored our request to the time
25 period in question. We didn't ask for from the very beginning.

1 We're not asking for right now. So to the extent that counsel
2 has raised the issue of military operations and not having
3 military operations right now, we are not asking for military
4 operations right now.

5 We've had a specific time period that we are asking
6 for, and based on the fact that there would be absolutely no
7 way for us to prove that it was General Hifter that was
8 actually behind the bombings and it was General Hifter that was
9 bombing in the way that he did that violated law of armed
10 conflict and inflicted the damage without these documents.

11 And the fact that state secrets privilege only
12 applies to the United States is -- for those reasons, the Court
13 should grant this motion to compel.

14 Again, we should not be talking about what the law
15 should be. That should be -- that's a matter for another
16 branch of government, not this branch of government.

17 THE COURT: Well, let me -- I'll give the defense a
18 chance to address the issue on the state secrets privilege, but
19 let's set that aside for a moment and talk about there are a
20 lot -- there are a lot of interrogatories and requests for
21 production of documents requests here.

22 MR. GILL: Yes, Your Honor.

23 THE COURT: And a lot of them are addressed in the
24 motion and the opposition. Frankly, as a court, it's always a
25 little challenging when there's a whole laundry list to go

1 through one by one, as opposed to resolving a discrete issue,
2 and that's certainly true with the state secrets privilege.
3 Either it applies or it doesn't. If it doesn't apply, then the
4 objection is overruled, and that's not a basis for withholding
5 or failing to respond, but setting that aside, there are a
6 whole slew of objections based on relevance and, and burden.

7 Let me ask you this question: There are a number of
8 interrogatories and requests for production of documents that
9 essentially address issues that go to General Hifter's
10 authority or the, whether he was acting with authority or under
11 the color of law. I'm trying to understand, though, whether
12 that is, in fact, really in dispute. It's alleged in the
13 complaint that he was the head of the Libyan National Army, and
14 I believe -- and again, I'll let the defendants address it --
15 that they concede that, that they have admitted that.

16 So all of the questions that go to the House of
17 Representatives and the orders of the appointment and
18 communications with foreign governments, to, to what issue,
19 what, what claim or defense do those go to if that is not in
20 dispute, whether he was serving at this time as the leader of
21 the Libyan National Army?

22 MR. GILL: Your Honor, you're absolutely correct. I
23 mean, if there is no dispute on that and if the defense counsel
24 is willing to stipulate to that, then that does not become an
25 issue. As you know, that is a -- an element of the TVPA. If

1 defense counsel is willing to stipulate to that, that that does
2 not come into court or does not come in as part of trial, then
3 certainly we can agree to that and we can withdraw those
4 specific interrogatories.

5 The interrogatories that we're mainly concerned about
6 are the other interrogatories, the ones about authority. If
7 defense counsel is willing to stipulate, then we'll gladly
8 withdraw those and, and stipulate to that.

9 THE COURT: Well, thank you. And I'll, I'll address
10 that with defense counsel.

11 To be clear, and I think you've said this, but I want
12 to be -- make sure I'm understanding, there are objections
13 that, that are interposed regarding some of the questions about
14 witnesses and activities and orders that, that were given.

15 MR. GILL: Yes, Your Honor.

16 THE COURT: Are you intending that those are supposed
17 to be specific to the three incidents that are alleged in the
18 amended complaint on April 6, April 14, and April 16, or are
19 you seeking information beyond that? In other words, you make
20 a reference to a time period, April 6 to April 16, I think,
21 but, of course, there could have been other military operations
22 going on at that time.

23 There's an objection. I'm trying to clarify whether
24 or not you're simply asking for things that are related
25 directly to the claims in the amended complaint.

1 MR. GILL: Your Honor, certainly we're asking for
2 things that are related to the amended complaint. However,
3 even though we asked for a specific time period for some of the
4 interrogatories, I believe there are some interrogatories where
5 we've asked for a little bit broader information, because
6 again, our claim has been that General Hifter was
7 indiscriminately bombing.

8 So to the extent that there are other orders that go
9 to that, and as you know, discovery is supposed to be fairly
10 open and, and liberal, what -- I want to make clear that what
11 we're not asking for, we have not asked for is the present, and
12 I think that has been the defense's issue, is that we're asking
13 for any current military operations.

14 I mean, to the extent that we've asked for some past
15 operations that are a little bit broader just to kind of for us
16 to be able to, you know, get to the fact that it was General
17 Hifter's MO to order indiscriminate bombings such as these,
18 that is what we're looking for.

19 So it is maybe a little broader time period in the
20 past for some of the interrogatories, and I can certainly
21 respond in more detail as to which interrogatory and request
22 for documents that would be, but what we're -- I just want to
23 make very clear we're not asking for is any current operations.
24 So we have limited it.

25 So we have not said, you know, from that time to

1 present, to where, you know, the Court could easily state,
2 well, you know, what would that have to do with our, with our
3 claims?

4 THE COURT: Well, is there any time period that, that
5 goes past April 16, 2019?

6 MR. GILL: Again, Your Honor, I would have to
7 double-check my interrogatories. I do not believe so, but I
8 can certainly double-check that while I'm, while I'm sitting
9 here.

10 THE COURT: Is there anything else?

11 MR. GILL: No, Your Honor, that's it.

12 THE COURT: Thank you.

13 MR. GILL: Thank you.

14 MS. McKASSON: Good morning, Your Honor. Lindsay
15 McKasson for Mr. Hifter. I did have one administrative matter
16 that I'd like to bring up at the, at the beginning of my
17 argument, which is that I believe it was a mistake, but
18 attached to Mr. Gill's declaration, it said that there were
19 objections and responses. It was actually just the, the
20 objections.

21 So I do have the responses if Your Honor would like
22 to review the responses, and I apologize I did not notice that
23 before yesterday, and therefore, we did not attach our
24 responses as an exhibit.

25 So I do have copies for everyone if you would like to

1 review our responses to interrogatories, because I don't think
2 it is clear that we actually -- that Mr. Hifter actually did
3 respond to a lot of the interrogatories and did not solely rely
4 on the objections.

5 THE COURT: Thank you, and thank you for making that
6 clear. I'm not sure that I, I need --

7 MS. McKASSON: Okay.

8 THE COURT: -- the responses in order to address
9 these specific legal issues, of course.

10 As you know, in general, discovery is not filed with
11 the Court and doesn't need to be, and so to the extent you
12 think there's something that's important to your argument, I'd
13 certainly be willing to consider it, but I, I understand your
14 position.

15 MS. McKASSON: Okay. Thank you.

16 Plaintiffs are asking that Mr. Hifter put his life at
17 risk by responding to further discovery requests in this
18 matter. Mr. Hifter should not be in the position between
19 choosing his life or answering discovery in a case that is
20 venued outside of his country of origin and residence.

21 Importantly, for reasons of comity, this Court should
22 not order that Mr. Hifter respond to the discovery requests
23 that seek military information because it would set a dangerous
24 precedent for United States citizens or military members being
25 sued outside of the United States.

1 We've discussed in detail the state secrets issue in
2 our briefs. I think I will move past that issue for right now,
3 but I would like to focus on comity.

4 There is a case, *Mujica v. Airscan, Inc.*, which is
5 771 F.3d 580, which is a Ninth Circuit case from 2014. It
6 says: International comity is the recognition which one nation
7 allows within its territory to the legislative, executive, or
8 judicial acts of another nation, having due regard both to
9 international duty and convenience, and to the rights of its
10 own citizens or of other persons who are under the protection
11 of its laws.

12 It continues: Comity refers to the spirit of
13 cooperation in which a domestic tribunal approaches the
14 resolution of cases touching the laws and interests of other
15 sovereign states.

16 Finally, it notes: Comity is a practice among
17 political entities (as countries, states, or courts of
18 different jurisdictions), involving especially mutual
19 recognition of legislation, executive, and judicial acts.

20 Here there is a true conflict between the United
21 States and Libyan law, the discovery rules of the United States
22 on the one hand and the military secrets law of Libya on the
23 other. Mr. Hifter should not be required to subject himself to
24 breaking the laws of Libya in order to comply with the United
25 States' discovery rules.

Beyond the true conflict, there are other factors to consider. That same Ninth Circuit case noted that the general presumption against extraterritorial application of U.S. law recognizes that United States law governs domestically but does not rule the world. Comity similarly rests on respect for the legal systems of members of the international legal community -- a kind of international federalism -- and thus serves to protect against unintended clashes between our laws and those of other nations which could result in international discord.

As Mr. Hifter argued in his brief, there is an ongoing civil war in Libya in which it is unknown and unclear which side will win and what the United States' position is on that subject. If the United States forces production of military secrets by a foreign military leader, it sets a dangerous precedent for nations to do the same to the United States, not to mention could result in the international discord of which the Supreme Court warned.

THE COURT: Well, let, let me stop you --

MS. McKASSON: Okay.

THE COURT: -- and ask you a couple of questions.

So I take it you agree, as reflected in your papers, that the law is settled that the state secrets doctrine can only be invoked by the United States government; is that right?

MS. McKASSON: I think that that's a little bit of a

1 different question -- difficult question to answer only because
2 the holding was not necessarily that it could only be provided
3 by the United States. Those cases involved the United States,
4 and, in fact, *Reynolds*, on which the Fourth Circuit based its
5 decision, where it did say it should be -- it is provided by
6 the United States, it was citing *Reynolds*, which actually only
7 said the government.

8 I don't think either one of those cases actually
9 held, considering both were involving United States claims,
10 that it could only be provided by the United States, but I do
11 admit at the very least -- oh, go ahead.

12 THE COURT: Maybe I can be more specific. Is it --
13 do you agree that the law is clear the state secrets doctrine
14 can be invoked only by a governmental entity and not by an
15 individual? In other words, it is not a private right that
16 individuals can raise?

17 MS. McKASSON: Yes, I, I believe that that is true,
18 but I, I think that Mr. Hifter as the field marshal of the LNA
19 is bringing that claim, as the field marshal -- field marshal
20 of the LNA and not as himself as an individual.

21 And I guess I can skip ahead that a lot of the
22 documents requested are not documents that would necessarily be
23 in Mr. Hifter's control as an individual, but he would only
24 have access to those documents because he is the field marshal
25 of the LNA, and therefore, these documents do not belong to

1 Mr. Hifter, but they belong to the Libyan National Army, and
2 for him to be required to disclose such documents again puts
3 this comity issue -- puts comity at issue.

4 I think that we can -- I'll fast-forward to some of
5 the issues that Your Honor raised. Plaintiffs' amended
6 complaint contains only three relevant dates: April 6, 14, and
7 April 16. Many of these requests go far beyond those dates,
8 and even if they do say that they at times are only at a
9 two-week period, all military actions between those two weeks
10 is far beyond the scope.

11 Those three dates, plaintiff actually -- sorry, not
12 plaintiff -- Mr. Hifter did provide interrogatory responses
13 regarding those three dates, though he did not provide
14 documents.

15 Plaintiffs argue that they need information regarding
16 funding, support, and, and communication with international
17 leaders to support their claim of his position of authority,
18 and as Your -- as Your Honor already noted, there is no dispute
19 regarding his authority. Mr. Hifter admits that he is the
20 leader of the LNA. He is the field marshal. There is no
21 dispute regarding his authority. The dispute is the nexus
22 between his authority and the actions in the amended complaint.

23 THE COURT: Let me make sure I understand that
24 because this is important and it can simplify what the parties
25 are fighting about in this case. Is it your position that the

1 defendant is not going to seek to have the case dismissed on
2 summary judgment or on another motion to dismiss or at trial
3 based on the failure of the plaintiffs to be able to establish
4 that he was acting at the time under color of law or the
5 authority of the state of Libya?

6 MS. McKASSON: He -- I think that there still is a
7 dispute as to whether he was acting at all because I don't
8 think that there's any connection between him and these
9 actions. There are ten -- at least ten warring factions going
10 on right now in Libya. There is right now --

11 THE COURT: So, so the question is whether or not the
12 plaintiffs need to collect information to establish
13 Mr. Hifter's position with regard to the government that he
14 purports to be affiliated with. On the one hand, I've heard
15 you just say, as your papers reflect and as the answer
16 reflects, that you admit that he was appointed by a
17 representative body to be the head of the Libyan National Army,
18 and so to the extent he's interacting with foreign governments
19 or he is dealing with the funding of the army or the
20 appointment by the House of Representatives, there's no need to
21 collect information on that if the defendant is waiving any
22 claim later that the plaintiffs will have failed to meet their
23 burden with regard to that element of the TVPA, not the element
24 that you're referring to, which is whether or not he had
25 knowledge of or, you know, condoned these, these actions that

1 they believe constitute the killing of others that would --
2 that was unlawful, but only as to the issue of the color of law
3 or his actual or apparent authority.

4 MS. McKASSON: Yes. He has authority as the field
5 marshal of the LNA, and I think that that is undisputed.

6 THE COURT: Okay. Thank you. I think that is a
7 clear statement made in open court and can address that issue
8 sufficiently.

9 So let's go on to some of the other issues. I will
10 tell you, let me just say for purposes of clarity and so that
11 we can move forward, I do not believe that this Court has the
12 ability to extend or change or modify the law, that the law of
13 the Supreme Court and the Fourth Circuit is binding with regard
14 to the state secrets privilege, and that it cannot be raised by
15 an individual as opposed to a governmental entity, and that it
16 can't be raised by a foreign governmental entity, that the law
17 is clear that only the United States can choose to interpose
18 that objection based on what I am bound by.

19 I would also note that the government has declined to
20 intervene, file a statement of interest in a -- you know, in
21 these related cases, and, and so the government has not chosen
22 to take a position on this issue.

23 Again, I don't think it's dispositive of what happens
24 in the case, but I think it is relevant for the consideration
25 of whether or not these foreign policy issues or the issue of

1 comity can, can correctly be addressed here within this
2 judicial proceeding, and so I do overrule those objections and
3 grant the motion with regard to the issue of state secrets, but
4 I do want to be clear that with regard to whatever answers have
5 already been provided, whatever supplemental answers need to be
6 provided, we've addressed the issue completely of relevance and
7 burden.

8 MS. McKASSON: Okay. And thank you, Your Honor.

9 I'm, I'm trying to find where -- I think that outside
10 of the state secrets issue, a lot of the interrogatories and
11 requests for production are overly broad. Just by way of a few
12 examples, giving the name and address of each person who is
13 under him in the military. That is, if he is at the top of the
14 military, every single person in the military, military -- all
15 military actions from April 4, 2019, to April 16, 2019, again,
16 that's all military actions within a two-week period --

17 THE COURT: Well, do you concede that military
18 actions related to the allegations in the complaint are
19 relevant and fair game, in other words, the activities of April
20 6, April 14, and April 16 relating to the specific locations
21 that are identified in the complaint?

22 MS. McKASSON: I concede that those are relevant. I
23 do reserve the issue of state secrets and comity, but I do
24 concede that those three dates are relevant to the complaint
25 here.

1 THE COURT: Would you also concede that providing
2 information with regard to witnesses, whether it be people in
3 the chain of command or others who would have had some
4 awareness or knowledge of those incidents, would likewise also
5 be relevant?

6 MS. McKASSON: Yes. The same response that I, I do
7 not want to concede on the issue of state secrets or comity,
8 but I concede --

9 THE COURT: Those objections are preserved.

10 MS. McKASSON: Okay. Thank you.

11 THE COURT: You don't need to repeat that. The
12 record is clear that you've, you've made those objections.

13 MS. McKASSON: Okay. Thank you very much, Your
14 Honor.

15 I do concede that there, that there -- the relevance
16 of those three dates, and I apologize, Your Honor, I don't
17 remember the specific things that you noted, but, but those
18 three --

19 THE COURT: Well, it was a question about witnesses
20 and specifically a chain of command. In other words, if the
21 plaintiffs are seeking to know who gave the orders with regard
22 to a particular attack from the -- Mr. Hifter down through the
23 chain of command to the people who carried it out --

24 MS. McKASSON: I think that is relevant to the TVPA
25 claim, Your Honor.

1 THE COURT: Okay. Thank you.

2 MS. McKASSON: Other interrogatories and requests for
3 production refer to a relationship to the HAF, which is an
4 undefined term. In plaintiffs' moving papers, they, they state
5 that the HAF is obviously the LNA, the Libyan National Army.

6 Well, for instance, in Interrogatory No. 6, it says
7 describe your relationship to the HAF. Mr. Hifter is the field
8 marshal to the LNA. Beyond that, what sort of specific
9 relationship are they looking for?

10 Regarding Interrogatory 17, describe in detail your
11 knowledge of the population centers, and then states three
12 population centers, again, this is just a very broad question
13 relating to three different population centers.

14 Mr. Hifter actually in his responses to their
15 interrogatories did the best he could without providing state
16 secrets in providing responses to these, but, but again, a lot
17 of them are just extremely broad.

18 And then many of the interrogatories and requests for
19 production refer to a, a paragraph of the complaint and ask why
20 he denied that paragraph. Again, Mr. Hifter did the best to
21 provide an answer, but it's a very broad question why, you
22 know, he denied, you know, something like an allegation such as
23 he waged indiscriminate war.

24 Well, you know, how do you provide an interrogatory
25 response saying, I did not wage indiscriminate war? And

1 similarly with the request for production of documents
2 regarding the same.

3 I made this argument earlier, but I would like to
4 close with regard to the requests for production of documents.
5 These documents are not Mr. Hifter's documents. These
6 documents belong to the LNA, and to the extent that he has
7 access to them, it is only because he is the field marshal and
8 not because they are his own documents, and so I do think that
9 there are issues of comity there where this is a -- these are
10 documents that are not Mr. Hifter's as an individual. They are
11 documents of the LNA, and the TVPA specifically cannot be
12 claimed against an organization. It can only be against an
13 individual, and therefore, I do not think that the plaintiffs
14 should be able to compel production of documents that belong to
15 the LNA and not Mr. Hifter.

16 And unless Your Honor has any more questions, I'm
17 finished.

18 THE COURT: Thank you.

19 Mr. Gill, I'll give you one final chance to be heard.

20 MR. GILL: Yes, Your Honor. Thank you very much.

21 First, on the argument that these documents belong to the LNA
22 and not Mr. Hifter is not a relevant argument mainly because
23 Mr. Hifter is a head of the LNA, those documents are under his
24 command and control, and he has access to those documents, and
25 that's what the discovery should be.

1 To Ms. -- to counsel's point of overbroadness, again,
2 a lot of the answers invoke the state secrets privilege. After
3 the state -- as Your Honor has just ruled, the state secrets
4 privilege is no longer -- is not applicable to this case. If
5 counsel would like to reanswer the questions, I'm sure we can
6 work out, you know, whatever (inaudible) there are to the fact
7 that they're overbroad.

8 We did our best to keep the questions very, very
9 limited, very, very focused. I mean, as counsel even stated,
10 we asked for military operations for a two-week period. We
11 didn't say months; we didn't say years; we didn't say anything.
12 So we are doing our best, but we do need to get the evidence
13 that we need in order to prove -- you know, in order to prove
14 our case.

15 THE COURT: Well, let me ask you some of the same
16 questions I asked your opposing counsel there.

17 MR. GILL: Yes, Your Honor.

18 THE COURT: But you've heard the defense concede that
19 information regarding the three specific incidents on April 6,
20 14, and 16 are fair game, having overruled the issue of state
21 secrets.

22 Let me one more time make sure that, that I
23 understand. This is one of the reasons that courts don't like
24 going through interrogatories or requests for production of
25 documents question by question because it's not the Court's job

1 to rewrite or make what might be inartful a more artful or
2 specific request. So we sort of have to live with what, what
3 we've got.

4 MR. GILL: Yes, Your Honor.

5 THE COURT: In the interests of efficiency, however,
6 I'm going to try and get us to, you know, an understanding so
7 that everybody understands what is being sought and what is
8 then being provided.

9 So are you asking for information about military
10 activities outside that took place between April 6 and April 16
11 that are not related to those three locations?

12 MR. GILL: No, Your Honor. We're asking for again
13 military operations that took place within those two-week
14 period that we stated. The not related to, I mean, if there's
15 a military operation that took place not even anywhere near
16 that area, then no. We're not asking, like, on the southern
17 side.

18 THE COURT: Well, the three locations are, as I
19 understand it, Spring Valley, or Wadi al Rabie --

20 MR. GILL: Yes, Your Honor.

21 THE COURT: -- on April 6; the Ayan Zarah district on
22 April 14; and the Hay Alintassar area in Tripoli.

23 MR. GILL: Yes, Your Honor.

24 THE COURT: Is that correct?

25 MR. GILL: That's correct, Your Honor.

1 THE COURT: Okay. And that's the information you're
2 looking for.

3 MR. GILL: Yes, Your Honor.

4 THE COURT: That's what you're intending to get from
5 them through your interrogatories and requests for production
6 of documents; is that right?

7 MR. GILL: Yes, Your Honor.

8 THE COURT: Very good. Then based on your
9 representation, the defense counsel's representation, I'm
10 granting the motion, and I'm requiring that any interrogatory
11 requests for production of documents related to those events on
12 those dates be provided fully, and defense counsel has
13 indicated that they have already provided some responses. I
14 haven't seen them. I don't need to see them.

15 MR. GILL: Yes, Your Honor.

16 THE COURT: But to the extent that any documents have
17 been withheld based either on the objection which has been
18 overruled with regard to state secrets or based on relevance or
19 overbreadth under the theory that it was ambiguous whether or
20 not more information was being sought regarding military
21 operations in other cities or other locations on, on other
22 dates or even that fell on the same date, what I am granting is
23 the ability to collect information directly related to the
24 claims in your amended complaint, which are those locations on
25 those dates.

1 MR. GILL: Yes, Your Honor.

2 THE COURT: Accordingly, that would apply to the
3 information seeking witness information, whether it's in the
4 chain of command or otherwise.

5 On the other hand, I'm denying the request with
6 regard to every potential person in the Libyan National Army.
7 I can't imagine that you would have wanted that --

8 MR. GILL: No, Your Honor.

9 THE COURT: -- but to the extent there's any
10 ambiguity, I'm not requiring that that be turned over.

11 It would not be relevant, and it would be overbroad.

12 Likewise, I'm not requiring any information about
13 other military operations that are not related to the events in
14 the amended complaint.

15 So the reason I am giving this much detail is because
16 I'm not trying to specify every single interrogatory and every
17 request for production of documents. I hope that this guidance
18 will allow both of you to understand the scope of what I am
19 granting. So I am granting the motion in part, and I'm denying
20 it in part.

21 I'm also denying it with regard to those
22 interrogatories and requests for production of documents that
23 go to Mr. Hifter's authority given the representations both in
24 the answer that he is the duly appointed head of the Libyan
25 National Army and concession that that is not an issue that's

1 really in dispute in this case.

2 MR. GILL: Yes, Your Honor.

3 THE COURT: That is not a concession as to the other
4 elements of the TVPA, and so both sides are welcome to argue
5 about the legal significance and the facts going to what
6 happened, whether he knew about it, whether he can be held
7 responsible.

8 But as I understand it, I am denying the motion with
9 regard to communications with other governments, with regard to
10 the House of Representatives, with regard to funding sources,
11 under the theory that those are questions that you are
12 propounding in order to establish his authority under color of
13 law.

14 Is that clear?

15 MR. GILL: Yes, Your Honor.

16 THE COURT: Okay. The Haftar's Armed Forces. It
17 sounds to me like this is a semantic issue. Tell me what it is
18 you're asking for. I'm not -- they seem to indicate that to
19 the extent Haftar's Armed Forces is simply a different name for
20 the Libyan National Army --

21 MR. GILL: Yes, Your Honor.

22 THE COURT: -- they are conceding that he is the head
23 of the Libyan National Army.

24 MR. GILL: Yes, Your Honor. And that's, that's what
25 we're asking for, and we made that clear in our papers as well,

1 that we've heard it referred to as Haftar's Armed Forces and,
2 you know, LNA, so we just used a different term, but it is the
3 LNA that we're, we're looking for.

4 THE COURT: So that issue is moot now that they've
5 made this representation, or is there something that needs to
6 be done?

7 MR. GILL: I mean, to the extent that that's the only
8 army that General Hifter is using and not some mercenaries that
9 are outside of the official LNA, that was what we were trying
10 to go for, if there are any mercenaries there. There have been
11 media reports and such that there are some mercenaries that
12 General Hifter is using that might not be actually incorporated
13 in the official LNA. So that is why we, we've asked for any
14 Armed Forces that he is -- that he is in charge of, which, I
15 mean, again, we don't think the question is, is overbroad or
16 confusing. If that's the only Armed Forces that General Hifter
17 has, then he can just state that under, you know, under oath
18 and interrogatory and provide documents of that, and we're
19 fine.

20 THE COURT: Very good. Well, based on that
21 specification, I will make sure rather than trying to go
22 through a fuller cross-examination from the bench, that to the
23 extent that Haftar's Armed Forces is not a term of art that
24 refers to some other group of people or that the -- Mr. Hifter
25 has some other organization that he supervises, that should be

1 reflected in the responses.

2 MR. GILL: Thank you, Your Honor.

3 THE COURT: Is there anything else that I need to
4 address that I am leaving out? The motion is granted in part
5 and denied in part, as I've stated from the bench. My order
6 will simply reflect that. This transcript will reflect the
7 details.

8 MR. GILL: Thank you, Your Honor. That's it.

9 THE COURT: I will require that any supplementation
10 based on today's argument be made within ten days.

11 MR. GILL: Yes, Your Honor. Thank you.

12 THE COURT: Thank you.

13 You may call the next matter.

14 MS. McKASSON: Thank you, Your Honor.

15 THE COURT: Thank you.

16 (Which were all the proceedings
17 had at this time.)

18

19 CERTIFICATE OF THE TRANSCRIBER

20 I certify that the foregoing is a correct transcript from
21 the official electronic sound recording of the proceedings in
22 the above-entitled matter.

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24

25

/s/
Anneliese J. Thomson